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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

IAN POLLARD, on behalf of himself)
and all others similarly situated,)
)
 Plaintiffs,) Case No.
) 13-CV-00086-ODS
)
vs.)
)
REMINGTON ARMS COMPANY, LLC, et al.,)
)
)
 Defendants.)

TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE ORTRIE D. SMITH
AUGUST 2, 2016
KANSAS CITY, MISSOURI

APPEARANCES

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13 MR. JON SPROLE
14 Remington Arms Company General
15 Counsel

16 Also Present: The Honorable Glenn A. Norton
17 Mr. Matthew L. Garretson
18 Mr. Brennan Bilberry
19 Mr. Joe Juenger

20 Gayle M. Wambolt, RMR, CRR
21 U.S. Court Reporter, Room 7552
22 Charles Evans Whittaker Courthouse
23 400 East Ninth Street
24 Kansas City, MO 64106 (816) 512-5641
25

1 TUESDAY, AUGUST 2, 2016

2 THE COURT: This appears to be a convocation of the
3 regional and national bar. Welcome, everyone. We are
4 together again in the case of Pollard v. Remington Arms
5 Company, LLC. For the record, the case number is 13-86.

6 The hearing this morning is granted at the request
7 of the parties and follows a proposed settlement agreement
8 which was preliminarily approved by the court late last year.
9 Following the preliminary approval, the parties provided
10 notification to members of the class which resulted in the
11 filing of a limited number of claims in the case.

12 The court is informed that the number of rifles at
13 issue here is somewhere between seven and a half million to
14 seven point eight million, and the number of claims actually
15 filed was less than 3,000, which suggested to the court that
16 perhaps the notice given to potential claimants was inadequate
17 to trigger a representative, whatever that word means, a
18 representative number of claims.

19 And so I asked the parties to confer and submit to
20 the court for the court's consideration another plan of
21 notification to potential members of the class. The parties
22 have done that, and we're here this morning to listen to
23 consider the proposed plan and decide whether we should
24 proceed with the court-ordered notice, to borrow a phrase used
25 by the parties in the briefing, and see what happens.

1 So before moving to the merits of the plan itself,
2 I'll ask the attorneys to record their appearance on the
3 record and the appearance of any other party who may be here
4 for purposes of addressing the sufficiency of the proposed
5 plan.

6 Who would like to go first?

7 MR. HOLLAND: I will, Your Honor. Eric Holland for
8 the plaintiffs and as class counsel. We've lodged our
9 appearances with the reporter and with the court before Your
10 Honor came out this morning. We're happy to go through that
11 again with each of the folks who are appearing on behalf of
12 the plaintiffs and present the --

13 THE COURT: You might go ahead and introduce them so
14 I can associate faces and names.

15 MR. HOLLAND: I sure will.

16 From Alexandria, Louisiana, Richard Arsenault, class
17 counsel. From Philadelphia, Charles Schaffer, class counsel.
18 My partner Seth Crompton from St. Louis. Tim Monsees from
19 Kansas City. Jon Robinson from Decatur, Illinois. We also
20 have representatives of Mark Lanier's firm from Houston here.

21 In addition, speaking about the notice plan today,
22 there will be three folks from Signal Interactive, including a
23 partner in Signal Interactive, Matthew Garretson, Brennan
24 Bilberry, and Joe Juenger.

25 THE COURT: Thank you.

1 MS. CROUCH: Good morning, Your Honor. Amy Crouch
2 from Shook, Hardy & Bacon. I'll be speaking on behalf of
3 Remington Arms Company. With me I have my partner John Sherk,
4 and also Dale Wills, Remington's national counsel from
5 Chicago. Our associate Molly Carella is with us as well as
6 Jon Sprole, general counsel for Remington Arms Company.

7 THE COURT: Thank you.

8 Judge Norton, your appearance here this morning is
9 not purely as a spectator. Would you like to inform those
10 interested and the court of your role in this proceeding?

11 JUDGE NORTON: Thank you, Your Honor. It's a
12 pleasure to be here before you this morning. With your
13 indulgence, I am here today as a mediator hired by the parties
14 to help them work on this plan and put their nose to the
15 grindstone and get something for the court that we believe is
16 going to increase these claims.

17 I wanted to come today, give a brief introduction of
18 what we've done and kind of the progress that's been made if
19 the court will allow that very short introduction, and then
20 I'll turn it over to counsel to present details of that plan.

21 THE COURT: Okay. Proceed.

22 MR. NORTON: Thank you, sir.

23 I've been a mediator in this case since just after
24 your order of December the 8th of 2015. Very briefly and not
25 to belabor it, I practiced law in Northeast Missouri for about

1 ten years, and then I was a state court trial judge and then
2 an appellate judge for 20 years. I left the bench and been
3 doing a lot of mediation. After your order, the parties
4 contacted me and asked if I would be willing to help them
5 mediate this and come up with this supplemental plan pursuant
6 to your order.

7 Class counsel are here. I've found them to be
8 experienced, hardworking, and dedicated to these class members
9 and committed to satisfying this court that every stone has
10 been turned over, and we've done the best we can to get this
11 notice where it needs to be.

12 I also can tell you that counsel for Remington are
13 here, and I've found them to be just as hardworking and
14 experienced. I've had a lot of contact with lawyers over the
15 years. Counsel on both sides are in this case for the right
16 reasons, representing their clients, and I have considered it
17 an honor to be here and to work with them and try to bring
18 something for the court that can get us where we need to be.

19 We got here -- the court's well aware -- you set out
20 a lot of it; so I'm not going to spend a lot of time.
21 Pollard's been on file for three and a half years, as the
22 court is well aware. The settlement agreement was filed in
23 December of 2014.

24 The parties worked diligently to put together
25 settlement and also the notice provision initially for the due

1 process notice. Angeion, a nationally-recognized notice
2 provider, came in and did that plan for the due process notice
3 and estimated that the print digital media and direct notice
4 that they completed would reach about 74 percent of all
5 settlement class members, and that reach is into 74 percent,
6 but reached them almost three times.

7 By the time the final settlement had been sent in,
8 as the court noted, about 2,300 claims had been filed, and
9 because of the claims and because of the court's December 8th
10 order, both sides have been working tirelessly to come up with
11 a supplemental plan that we all hope will meet with the
12 court's approval and hired me for that purpose to mediate
13 this.

14 This has not been a mediation where we've sat down
15 one afternoon and had a cup of coffee and hoped for the best,
16 and I wanted briefly to let you know that I have spent
17 hundreds of hours with these lawyers and on this case and with
18 the notice providers and with the interested parties at the
19 request of these parties. And I think it's an indication of
20 their dedication to getting this right.

21 We have engaged the country's foremost media experts
22 to complement the work that's already been done, and I have a
23 quick outline just so we can try to show what we've done here
24 to get this done.

25 I met with the parties in Houston in February and

1 then in Dallas in February for two days. I went to New York
2 and met with the Remington team there and in New England, went
3 to San Francisco and met with Public Justice and Arthur Bryant
4 and Bill Rossbach and others with Public Justice because of
5 their interest to ask them for their input. At the request of
6 the parties, to ask their input of what will make this notice
7 better and how to get us where we need to be. We did speak at
8 that meeting about digital messaging being something that
9 needed to be part of what we moved forward.

10 After going to San Francisco, then later in April I
11 went to Bozeman, Montana, and met with my new friend Bill
12 Rossbach and Richard Barber, and we spoke for an entire
13 afternoon about the tragedy that had befallen Mr. Barber and
14 his family and about what they believed might help us get
15 where we needed to be. And all that information was brought
16 home to these lawyers and passed on to them and considered,
17 and we've done the best we can to utilize all of the great
18 things we heard from those folks and made it a part of this
19 plan.

20 Finally, I met with the Signal folks, Jim Messina
21 and Matt Garretson and their crew, who you are going to hear
22 from today, in Washington, DC, in early May. I will have to
23 say it's one of the more impressive meetings I've ever
24 attended in my life just in terms of the way they make their
25 presentation, which the court will be hearing today, and

1 you'll be able to form your own opinions, of course, but also
2 in terms of background, experience, the bona fides, as we used
3 to say, that tell you that somebody's been there, they've done
4 that, they know what they're talking about. You're going to
5 get to hear from those folks here today.

6 Dozens of conference calls, talking about the legal
7 issues, and I mediated the legal issues that were addressed by
8 the court. Counsel will talk about that, and we reached
9 resolution on that. And these were hard-fought and sweat-
10 driven conversations about how to get these things done.

11 The parties were very, very willing to let me push
12 them, and most folks who have had me as a mediator will tell
13 you that, as my wife likes to point out, I've still got a
14 little judge in me, Your Honor, and I can be a little bit
15 pushy at times. And they accepted that.

16 We talked about the radio ad language. We talked
17 about the language in the posters that are going to be put up
18 that you're going to hear about. We talked about the direct
19 mail that Remington is going to do, what it's going to say and
20 who it's going to reach. And then we talked in great detail
21 about the digital messaging. I was intimately involved with
22 the testing runs that we put out there with different kinds of
23 language to see what reached the most people and what was
24 responded to most often. And that testing was detailed, and
25 that testing to me was impressive and made me feel like we

1 have ourselves in a place where we can't do any better. And
2 we hope that the court feels the same way.

3 We've got a group here, and I will only speak about
4 this briefly because you've heard about it before. But what
5 the testing and the experts have found is what I suspected
6 from the first moment I learned of this case and where the
7 case found itself procedurally with regard to these class
8 members.

9 Gun owners are a group like no others, Your Honor.
10 I think most folks know that. I think the court is aware of
11 that. They are a group of people so different, even in terms
12 of class members in a class action and the class actions that
13 we hear about, whether it's car owners that have a problem
14 with an automobile or whether it's a drug manufacturer who may
15 have people who have taken drugs.

16 These class members know each other. These class
17 members talk. They have communities. They visit with each
18 other. If one person gets notice, dozens will know about it
19 because they talk about their gun issues, and they spend their
20 time together, whether it's coffee shops, whether it's feed
21 stores.

22 And a large percentage of these folks, as I know
23 from personal experience, wouldn't turn their rifles in if we
24 knocked on their door and told them what the allegations are
25 in this case because, frankly, they're suspicious, and they

1 don't believe it. I've got a lot of friends in Northeast
2 Missouri, who know that their Second Amendment rights are
3 challenged and they're convinced of it, and they feel like
4 someone's trying to take their guns away. They will not
5 respond to any notice from anybody no matter what it says.
6 The harsher the language, the more likely they are to turn
7 away.

8 There's another big group of those folks who will
9 not turn their rifles in because they love their rifles.
10 They've owned them for decades and they've never had a
11 problem. These lawyers didn't know it when they hired me but
12 I'm one of those. I own one of these rifles. Took the
13 largest deer of my life with a 700 Remington rifle.

14 I gave it to my cousin when I moved to St. Louis. I
15 called him after this started. I said, Hey, Rick, you want to
16 turn that rifle in? He said, Not a chance. It's the best
17 shooting rifle I've ever had in my life. I've never had a
18 problem. I'm not sending that rifle in. I don't care what
19 they say.

20 I think there's a lot of those people out there. It
21 makes this class so unique and so difficult to address in
22 where to go.

23 We're going to cover three topics today and I'm
24 going to wind down. We're going to have Eric Holland from the
25 Holland Law Firm in St. Louis who's going to address the legal

1 issues that were in your court's order of December the 8th and
2 talk about how the parties have agreed and I believe
3 accomplished their goal of taking care of those legal issues
4 that were a concern.

5 Amy Crouch from Shook will speak on behalf of
6 Remington and talk about the additional notice elements that
7 Remington is taking on, and we believe they are significant at
8 great cost to them with regard to what they're going to do
9 separate and apart from what Signal will be telling you about
10 with regard to direct mail, with regard to mailing to known
11 addresses, with a lot of things that they have found, gun
12 shops and the like. And she'll tell you about those things.

13 And then, finally, the Signal group is going to come
14 up, and they're going to address the supplemental notice.

15 I want to just tell you, because I don't think these
16 guys are going to get up here and give you a fair
17 representation of who they are because, unlike me, they don't
18 like talking about themselves. You're going to hear from Matt
19 Garretson. He founded the Garretson Resolution Group. 15
20 years of settlement experience in the complex settlement
21 administration area. He focuses on aggregate settlements.
22 They have 450 employees.

23 He was involved in the World Trade Center disaster
24 settlement when that came down. He was involved in the
25 Deepwater Horizon, which is the BP Oil spill, settlement and

1 getting it worked out. He's worked for the NFL, the National
2 Hockey League, a lot of mass torts, and has an unbelievable
3 amount of experience in the complex settlement administration
4 world.

5 In the last couple of years he began researching how
6 to move forward in the class action notice field and how to
7 use what he had learned in that area. He joined up with Jim
8 Messina, and the two of them together have taken on a
9 collaboration on how to improve class notice.

10 Brennan Bilberry is here and will be speaking on
11 behalf of Mr. Messina and their group on mass media data
12 analytics. They specialize in digital media. They're
13 internationally recognized, and they have reached targeted
14 audiences through contemporary media.

15 As the reach of traditional print media goes down
16 and down, the reach of digital media goes up and up, and the
17 two of those things seem to be traveling in opposite
18 directions and traveling fast. That media evolves at a rapid
19 pace. These guys know how to do it.

20 I learned so much from them. It's very impressive.
21 There's a lot of things they talk about that I have to say,
22 Wait, explain that to me again because I don't understand it.
23 But they're really, really good at what they do, and Messina
24 offers a highly-specialized expertise.

25 As an aside, he was Barack Obama's campaign manager

1 in 2012, used digital messaging to reach a hunter and
2 outdoorsman dynamic of people to help in that campaign that I
3 think you'll probably hear about today, and that group and
4 that focus has helped in this regard with this case and how
5 we're trying to get this out.

6 More recently he served as campaign adviser to David
7 Cameron in England. He's been retained by the prime minister
8 of Italy as a campaign adviser, worked for film studios,
9 retailers, and they've supervised over a billion dollars of
10 paid advertising.

11 Finally, Joe Juenger, young man that I've just been
12 delighted to work with, he works with Matt Garretson in mass
13 torts. After Brennan Bilberry gets done talking about the
14 digital messaging and how that will work and how they intend
15 if the court approves to get this messaging out digitally, Joe
16 Juenger is going to talk about the radio piece that we've
17 added as another leg under this stool to try to make sure it
18 reaches as many people.

19 Joe Juenger is working with Matt Garretson. He's
20 got a management degree from Miami, professional designation
21 from UCLA, MBA from Xavier, a law degree from Northern
22 Kentucky, and a lot of knowledge about aggregate settlements.
23 And he's going to explain how this radio piece has been set
24 up, where it's going to run, and who it will reach.

25 So with all that being said -- and I apologize for

1 being a little long. I just wanted to give the court that
2 background. I appreciate your indulgence -- I'm going to turn
3 it over to the lawyers to let them make the presentations.

4 THE COURT: Okay. Thank you very much.

5 Mr. Holland, I assume that you are going to address
6 the two issues unrelated to notice that were brought to the
7 court's attention by objectors Townsend and Pennington. I
8 also note that both Rodney Townsend and Terry Pennington have
9 withdrawn their objections; so I'm not sure how much time we
10 need to spend on that.

11 I do note that Rule 23 does address what happens
12 when an objector attempts to withdraw his or her objection,
13 and it is Rule 23(e)(5) which indicates a class member may
14 object to the proposal. If it requires court approval under
15 this subdivision, the objection may be withdrawn only with the
16 court's approval. So the question is do I need to
17 affirmatively take some action to approve the withdrawal of
18 those objections?

19 MR. HOLLAND: And, thank you, Your Honor. You've
20 hit the nail on the head right out of the gate. I am prepared
21 this morning to discuss all of the legal issues that were
22 raised and that you put in your December 8th order. I think
23 we've briefed it extensively from pages 11 through 26 of our
24 briefing and covered, I think, the state laws that you have
25 pointed us to in terms of the strengths and weaknesses of

1 those claims.

2 I don't have a lot to add to that briefing. I'm
3 certainly happy to answer the court's questions about the
4 briefing or any questions that the court has about any of the
5 particular cases or arguments that we made. I do think that
6 the withdrawals of the objections here that also came with the
7 fact that both objectors have now endorsed the settlement as
8 in their opinion through their counsel as being fair,
9 adequate, and reasonable carries some weight since they have
10 been made privy to our filing, our additional notice plan, and
11 our briefing on these very issues.

12 So to Your Honor's point, any questions that you
13 have about our briefing, I'm happy to address.

14 THE COURT: Well, I have no questions about your
15 briefing, Mr. Holland. I've read your briefs, and I think
16 that the subjects have been well treated in the briefing
17 provided to the court.

18 I will ask what inducement or consideration, if any,
19 was exchanged with Mr. Pennington or Mr. Townsend for their
20 withdrawal of their objections.

21 MR. HOLLAND: At the court's request, I'm happy to
22 report that there was no inducement to either Pennington or
23 Townsend. Their counsel, who did work on this case and raised
24 issues that we thought were of value, will be compensated if
25 in fact there is an award, a successful award of attorneys'

1 fees here.

2 THE COURT: Okay. What else?

3 MR. HOLLAND: Your Honor, in a general sense, I
4 guess, as a housekeeping matter, we would, I suppose, move
5 Your Honor to go ahead and accept those withdrawals of those
6 objections and make that motion. If Your Honor would like to
7 have that in paper form, we would certainly be willing to ask
8 that it be a written motion if Your Honor would prefer that.

9 THE COURT: I would prefer a written motion, and
10 I'll tell you that my inclination this morning is to accept
11 those withdrawals. But if you'll file a written motion, I'll
12 act on it.

13 MR. HOLLAND: Okay. Thank you, Your Honor.

14 And I guess as a preliminary matter, I would say
15 that class counsel continues to be very proud of this
16 settlement. We think that this settlement provides a valuable
17 service to gun owners and is in fact very beneficial to the
18 public. I have three brief points this morning that I planned
19 to talk about. We just talked about point number three so I'm
20 down to two. I'll continue to be brief here.

21 But we did make an extensive filing about the
22 notice. Judge Norton, who was a tremendous, tremendous help
23 during this process, which I would describe anywhere from
24 acrimonious to hard fought throughout, he was an excellent
25 steady hand through this process. And you're going to hear

1 more about the details of this plan very soon.

2 We believe -- I believe that this additional notice
3 plan today will be effective and that it's going to result in
4 a more significant response rate, which is what you ordered us
5 to do on December the 8th. I've been involved in a lot of
6 class actions for a lot of years, a lot of MDL cases, even MDL
7 cases in this district, and this is cutting-edge stuff. I'm
8 very impressed with it, and I'm happy to have my name
9 associated with it.

10 More importantly, though, I think this is class
11 counsel's biggest point, the data here objectively prove this.
12 You're going to hear from the folks that are involved in this,
13 and this isn't guesswork. This is objective. We're going to
14 be able to show you what we're talking about here. As I said,
15 more details on that here very shortly from the folks with
16 Signal.

17 My second point really is a side note. It's an
18 issue that we raised in our briefing, and I do want to
19 underscore at this time, and it's about claims rates. Judge
20 Norton spoke to it very briefly here this morning. We have
21 put some briefing in on the case law on this, and we think
22 that solely focusing on claims rate in any given case risks
23 throwing the baby out with the bath water. In this particular
24 case, we want to get guns fixed. We really, really do. And
25 we've given it our best, and I'm not going to belabor the

1 point any further this morning other than what we've put in
2 our briefing and what's been said so far here today.

3 I'm happy to answer any questions of the plaintiffs
4 if you have any further. If not, I'm going to turn it over to
5 my colleagues from Shook, Hardy.

6 THE COURT: I do have a question for you,
7 Mr. Holland.

8 Is it possible -- I have my own view on this, but
9 I'm interested in your view -- is it possible for the parties
10 to have notice which is constitutionally sufficient, that is,
11 comports with the requirements of due process, and complies
12 with the federal rules, specifically Rule 23, yet generates
13 such a low return rate, that is, a low number of claims, that
14 it makes it very difficult for the court to find that the
15 proposed settlement is fair, adequate, and reasonable? That
16 is to say that the benefits to one side so greatly exceed the
17 benefits to the other that the court would labor to make that
18 finding. Is that possible?

19 MR. HOLLAND: Well, Your Honor, I think you've
20 described what happened here, and on December 8th, which
21 happens to be my birthday, when I read your order, it
22 certainly didn't sit terribly well as a birthday present. But
23 I will tell you, as we've gone through this process and I've
24 thought about all the additional guns that are going to be
25 fixed as a result of your action and you serving as a

1 fiduciary of this class, which is, as you know, your
2 obligation, yes is the unequivocal answer to your question.
3 And that's exactly what we're doing here.

4 THE COURT: Thank you.

5 MR. HOLLAND: Thank you.

6 MS. CROUCH: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MS. CROUCH: I introduced myself before but, again,
9 my name is Amy Crouch. I'm a partner at Shook here in Kansas
10 City where I've spent my entire career, and I represent
11 Remington Arms Company in this litigation.

12 Your Honor, for the past few years I've been charged
13 with orchestrating the claims process on the Remington side of
14 this case, so everything from the claim form itself to working
15 with the phone center, to helping set up the settlement
16 website, monitoring the claims as they've been coming in,
17 dealing with written notice issues, and making sure all the
18 pieces are running together as smoothly as possible.

19 We're obviously here to talk about one of those
20 pieces today, which is notice, and I wanted to present to the
21 court the two additional items that Remington is proposing it
22 work on in order to complement the work that the Signal Media
23 group is suggesting it undertake.

24 The first proposal from Remington is that it send
25 out approximately 11,000 revised short form poster notices to

1 third-party retail locations. So Remington will use its
2 traditional distribution chains, going down through the
3 wholesalers, and asking that they push these posters out to
4 the 11,000 retail locations. And we'd ask those third parties
5 to post the notice for the duration of the claims filing
6 period. This is a bit of a bootstrap onto the Signal work
7 with the hope that individuals in the stores will see the
8 notices and it will remind them to file a claim.

9 Remington's second proposal is that it send out
10 emails and postcards to a list of 1.1 million consumer contact
11 information that it's been able to garner from various
12 internal sources. The 1.1 million addresses that we've gotten
13 are not targeted to this litigation. We've compiled them from
14 various sources. Customers who signed up for email
15 notifications on our company website, signed up for email
16 notifications at a trade show, people who registered their
17 warranties with Remington, had repair work done, contacted our
18 customer service lines.

19 We've basically gone through every piece of data
20 that we have at the company that would allow us to gain an
21 email address or a physical mailing address, compiled all of
22 them together, de-duplicated them against each other, and we
23 wound up with this 1.1 million email and mailing addresses.

24 We recognize this list is vastly overbroad. It
25 includes consumers who certainly don't own the models at issue

1 in this litigation. It likely includes individuals who don't
2 own a firearm at all, but Remington is suggesting that
3 everyone on the list receive that same short form notice,
4 again, as a bit of a belts-and-suspenders approach to notice
5 to try to get the word out as broadly as possible.

6 THE COURT: Okay. Ms. Crouch, you indicated that
7 you worked on the claim forms in this case, and those are
8 shown at Exhibit A. I'm curious why, and maybe this was
9 totally unintentional, why the claim forms begin with the
10 voucher forms rather than the return and retrofit forms. If I
11 were clicking through one of the social media ads and clicked
12 on a claim form and the first one I saw was I was entitled to
13 either a \$12.50 or a \$10 voucher, I'm not sure I would go on
14 beyond that.

15 Would it be more efficacious to lead with the claim
16 forms that relate to retrofitting the triggers and rendering
17 the firearms safe or safer as the case may be?

18 MS. CROUCH: Certainly. You're correct, that was
19 completely unintentional. I think that the claims forms go
20 from the least complicated to the most complicated. The form
21 that has the refund and the attestation on it is at the very
22 back only because it was the longest. It would be a simple
23 process to simply change the order of the claim forms in the
24 PDF that appears on the website.

25 THE COURT: Okay. Can we agree that the simplicity

1 of the claim form is somehow related to the number of claims
2 that are actually filed? If it's more simple, a gun owner may
3 be more likely to file a claim than if the claim form was
4 complicated and lengthy.

5 MS. CROUCH: I think you could state that as a
6 general matter. Our position would be that these claim forms
7 are not complicated given the number of different models at
8 issue in the litigation, given the number of different
9 remedies that are available. I also think it's important that
10 few people are filing their claim forms with the written claim
11 form as is traditional in today's world. So when you look at
12 the written claim forms, I think they look more complicated
13 than it looks when someone's filing a claim online.

14 When a person is filing a claim online, one of the
15 first questions that's asked is what is your model number.
16 When the model number is entered, then the questions pertain
17 only to that model number, and they appear one at a time on
18 the screen. So it becomes a much simpler and quicker process
19 when the claim is being filed electronically.

20 THE COURT: Unless the gun owner has several
21 firearms that qualify?

22 MS. CROUCH: That's true.

23 THE COURT: And then one other question with respect
24 to the claim forms. Several of them contain the warning that
25 says, "Stop using your firearm. Any unintended discharge has

1 the potential to cause injury or death." And then there is a
2 box which requires the firearm owner to acknowledge that he
3 has read the warning provided. What's the purpose of that?

4 MS. CROUCH: Your Honor, we included the language
5 that you're referencing only for those firearms that are the
6 subject of the XMP recall. So this is the warning language
7 that appears on the XMP recall website. The purpose of the
8 warning, again, is simply to make sure that the consumer has
9 been alerted the firearm you're attempting to submit as part
10 of this settlement is part of a recall. You need to know that
11 Remington admits the defect there. We're asking you to stop
12 using your firearm. And, yes, we do ask the consumer to check
13 a box to acknowledge that they've read that warning.

14 THE COURT: One consequence of a gun owner checking
15 that warning might be that if the owner doesn't have the gun
16 repaired and there is a subsequent accidental or unintended
17 discharge and that someone is injured or killed as a result of
18 that discharge, that that owner may well face a contributory
19 negligence assumption under the risk of comparative fault
20 defense in a personal injury case.

21 Is that some sort of disincentive to file a claim,
22 and is it necessary?

23 MS. CROUCH: I don't know that it's necessary, Your
24 Honor. We do believe that it would be a problem for the
25 company to alert a consumer that its firearm is subject to a

1 recall and not have that consumer acknowledge that they have
2 read the warning and understand that they need to stop using
3 their firearm. We're trying to prevent exactly the situation
4 that Your Honor is describing.

5 We do not want someone to try to register a claim --
6 for us to say your firearm is the subject of a recall, and to
7 have them not turn their firearm in for repair. We're trying
8 to encourage consumers to get those firearms back so that we
9 can do a retrofit and fix the defect.

10 THE COURT: Can you accomplish the same goal by
11 simply having a warning without the checkoff that the gun
12 owner has read and acknowledges the warning provided?

13 MS. CROUCH: I think we could do that, yes, Your
14 Honor.

15 THE COURT: Thank you.

16 MS. CROUCH: Thank you.

17 THE COURT: Next.

18 MR. GARRETSON: May it please the court.

19 My name is Matthew Garretson. I'm here on behalf of
20 Signal Interactive Media. I'll begin my presentation today
21 with an overview of the scope of our engagement, a discussion
22 of our approach, and, finally, a review of the results of our
23 preprogram testing, which is really at the heart of what we're
24 here to discuss today, as well as our recommendations to the
25 court.

1 In December -- in the December 8th order of 2015,
2 the court directed the parties to develop a notice plan to
3 result in a more significant response rate. To this end the
4 parties engaged Signal Interactive Media. From March 29th,
5 2016, to May 12th, 2016, Signal designed preprogram testing,
6 the results of which are the basis of our presentation here
7 today.

8 During this time we obviously collaborated with the
9 mediator, Judge Norton, who we believe has informed the court
10 of some of our work to date. In that time frame working with
11 Judge Norton, we designed various media and messaging
12 approaches. We've conducted preliminary tests on those
13 messages and approaches, and we've collected empirical
14 results. And that's what is unique about the approach we're
15 bringing to the table, Your Honor, is so often notices run and
16 then the results are seen later after the campaign.

17 We are actually able to do preprogram testing, which
18 my colleague Brennan Bilberry will explain, which shows us
19 empirically what will happen if we run a certain message with
20 a certain theme.

21 It's important to also relate to the parties and
22 those in the court today that all we've done to date is
23 testing. We have yet to run the full campaign we're prepared
24 to run. But we're pleased to say as a result of that testing,
25 that it does indicate that the media and messaging we're

1 recommending will indeed result in a more significant response
2 rate. My colleague Brennan will review those results
3 momentarily.

4 So what is the scope of the work we've done to date?
5 Well, our goal, as I said before, and Judge Norton, the
6 mediator, has highlighted in his introductory comments, our
7 goal is to reach and inform individuals of the matter of their
8 rights and of their options. That is to get them to engage in
9 some way with the message and then us to be able to provide to
10 the parties and to the court some empirical data to evince
11 that they did in fact engage with the message.

12 I think it's also important to highlight we were not
13 the authors nor the engineers behind the original notice.
14 That was a program that was done before our engagement.

15 So Signal Interactive Media, what about our
16 approach? As Judge Norton related to the court, the Messina
17 Group and the Garretson Resolution Group saw an opportunity to
18 really revolutionize the way in which notice was being done in
19 the United States and bring it up to what we believe is a
20 leading-edge standard that has proven so beneficial not only
21 in the areas which were highlighted within the political
22 campaigns but also being done by all the advanced retailers
23 and consumer type of advertisement in today's day and age.

24 Indeed it's a winning formula and incorporates the
25 science of digital advertising into the notice campaign. It

1 applies data and analytics to empirically measure, to reach an
2 efficacy of what we intend to do before we in fact do it. And
3 that is the preprogram testing.

4 We recognize that it's an innovative approach. It's
5 newer to the legal field, but -- and it will, we believe,
6 disrupt certain decade-old ways of thinking about notice. But
7 advancement is necessary as the old way relies on outdated
8 media, again, how readership and print advertisement is going
9 down and down and down and the use of social media and digital
10 media is going up and up and up.

11 So with the risk of being histrionic, we really view
12 this approach as a true public service. It's something that
13 needs to be done in the field of notice to enable people who
14 may benefit and participate in a class action settlement to
15 hear about what it is, to engage with the information, and
16 determine whether or not they would like to participate.

17 So how have we applied the cutting-edge empirically
18 demonstrable approach to this matter? The Signal experts have
19 substantial past experience modeling datasets to administer
20 mass media campaigns involving the hunter/sportsman
21 demographic, among many other groups. Our proprietary
22 hunter/sportsman consumer models and data analytics
23 incorporate a variety of information and inputs.

24 The information includes, for example, hunting
25 permits, membership and relevant organizations, and stated

affinities that some of the hunter/sportsman may make on their social media and other internet outlets. The resulting data provides unique resource for additional notice, and we will explain in our -- in a few moments how this has actually worked in action.

So to highlight our media plan and proposed path forward, we are proposing a social media network -- social media networking campaign using our unique proprietary databases and analytics -- my colleague Brennan Bilberry will go into that following my introductory comments -- as well as a national radio media campaign including advertisements across the country's top syndicated radio networks and programs aligned with the demographics of potential class members. My colleague Joe Juenger will cover that as soon as Brennan presents the results of the social media campaign.

And as you've heard from Remington's counsel, we believe this will be supplemented, of course, by the direct mail, email, and retailer poster campaigns that their counsel has just articulated. So with that, I'll hand it off to --

THE COURT: And the radio?

MR. GARRETSON: Yes, yes, yes.

With that, Your Honor, I'll hand it off to Brennan Bilberry to discuss the preprogram and testing results to date.

THE COURT: Let me ask you to define some terms for

1 me, Mr. Garretson. The terms are impression, reach, and
2 frequency. I think I know what they mean, but I want to be
3 sure that I'm speaking and understanding --

4 MR. GARRETSON: Absolutely.

5 THE COURT: -- what you're telling me.

6 MR. GARRETSON: For sure. Yes, Your Honor.

7 Reach, we define that as the number of people who
8 have seen the post that is on social media. The post counts
9 as reaching someone once someone logs in, and they see the ad
10 while they are actively using media like Facebook.

11 THE COURT: How do you know?

12 MR. GARRETSON: Because of the way they'll engage
13 with it in terms of click-through. So we have -- we first
14 discussed reach, and then there's the impressions. Then
15 there's the frequency with which they engage with it, and then
16 there's the total click-throughs.

17 And as Mr. Bilberry will describe, once we have
18 empirical data on varying tests we did to see which ones had
19 the most impressions, the broadest reach, and the most
20 engagement through click-throughs.

21 THE COURT: So impression is simply someone who goes
22 to that page and looks at the ad?

23 MR. GARRETSON: Well, sort of. The impressions are
24 the number of times a post on a page is displayed whether or
25 not the post is clicked or not. It's the number of times --

1 it's actually the number of opportunities people have to
2 engage with the message.

3 THE COURT: Okay. So they could conceivably call up
4 a page that has the ad on it three or four times.

5 MR. GARRETSON: That's correct.

6 THE COURT: You would count it as three or four
7 impressions, but we don't know whether they actually looked at
8 it and took some -- well, you'll know whether they took some
9 action, but you don't know whether they've looked at it or
10 not.

11 MR. GARRETSON: We know how many times that they had
12 the opportunity to view the impression, to view the message.
13 That is the impression. We know the frequency, the number of
14 times that it was then served to each person, and we know the
15 audience and demographic to which we're serving it. And then
16 once we deduct from that how many times people actually click
17 through, that's where we get the measurable engagement in
18 reach.

19 THE COURT: Okay. So for an ad to reach a firearms
20 owner, they would have to actually click on the ad?

21 MR. GARRETSON: Not necessarily. They could see,
22 and you'll -- as we appended to our report, they can see the
23 message, which has a cursory review and description of what
24 the matter is about. They can see the theme that underlies
25 what we're asking them to click through, but they may observe

1 that and decide not to go any further. But we can measure the
2 people who do decide to engage more deeply with the message.

3 THE COURT: And what do we call that?

4 MR. GARRETSON: Click-through. And we'll have -- if
5 it would be all right, Your Honor, I'll have Mr. Bilberry go
6 into exacting detail of that and the various tests we've done.

7 THE COURT: Okay.

8 MR. GARRETSON: Thank you, Your Honor.

9 THE COURT: Thank you. Good morning.

10 MR. BILBERRY: Good morning. Your Honor, may it
11 please the court. I'm Brennan Bilberry with the Messina Group
12 and Signal Interactive Media. In addition to -- I'll spend a
13 little bit of time on the terminology as well that Matt talked
14 about and this is, you know, our specialty. But I first want
15 to give a brief overview of what the preprogram testing looked
16 like and then how those results, which include the
17 terminology, were prepared.

18 THE COURT: Okay.

19 MR. BILBERRY: As part of the preprogram digital
20 media testing, we tested a social networking media plan among
21 a sample of several hundred thousand potential class members
22 in order to collect preliminary empirical results. These
23 groups were made up of individuals who were likely to be
24 hunters or have expressed some interest in Remington or both,
25 and we determined this because this is based on which groups

1 or companies or statements they've made on social media
2 publicly; so if they associate with a specific hunting group,
3 if they have commented on pages from Remington or hunting
4 pages.

5 We also combined it with the results of the initial
6 testing to determine which was reaching -- sorry -- which ads
7 were resonating the best with different groups on Facebook,
8 and then created models of the likeliest people to be class
9 members based on those who responded most directly to the ads
10 that were relevant to the class members and who clicked
11 through to the notice website.

12 This type of preprogram testing is entirely
13 customary and expected in commercial and political mass media
14 advertising, and the purpose is to measure the effectiveness
15 of media messaging images so that the advertisers may adjust
16 and optimize what they are doing prior to launching the full
17 program. And this leads to better rates of engagement or
18 click-through, which I'll talk about that terminology in a
19 second, and better response to the ads overall. We would
20 never launch a large-scale commercial or political
21 advertising, frankly, without preprogram testing, and it's why
22 we think it's really important in this case.

23 This was administered in three rounds, which allowed
24 for adjustment of the messages and adjustment of graphic
25 design. And so we were able to compare the best targets, best

1 messages, and best graphic design from the first rounds and
2 test them again to determine what we thought was the most
3 effective way to get class members to click through to the
4 website to be provided information about how they can have
5 their trigger replaced.

6 The testing encompassed several different
7 advertisements via Facebook that were initially in the first
8 round search to 150,000 individuals who were identified as
9 likely to be potential class members, and that was based on
10 the criteria that I discussed right at the beginning.
11 Individuals will see these ads when they first log into
12 Facebook and as they continue to actively move around the
13 site. And the way that we know they've seen the ad is because
14 they have to, according to Facebook's data, be actively using
15 the website in order for that to count as an impression.

16 The reason Facebook was selected for this preprogram
17 test as it's -- it's the overwhelming and the highest read
18 social network, particularly among all demographic groups with
19 an ability to provide us with very granular results during the
20 test. So while a lot of old-style advertising and notice
21 relies simply on looking at demographic groups and then
22 targeting based on that demographic group, we generally
23 believe in a much more granular approach where testing allows
24 you to see how different ads work with different groups.

25 So instead of just, you know, for example, finding,
34

1 you know, the publications that are read by males over a
2 certain age, we see how different demographic groups interact
3 with the ads and then serve those ads that are best and are
4 most likely to drive them to a specific website to that group.

5 So the empirical results of the preprogram testing,
6 and I'll cover the terminology in this section as well,
7 impressions, there were one point -- I'm sorry, 1,049,860
8 impressions, and this is the total number of times people saw
9 an ad. And we know that they saw an ad because the reporting
10 that comes back from Facebook requires them to be logged in
11 and active on the site.

12 That number includes people who saw the ad more than
13 once. So we'll delineate between that and a reach. Reach is
14 the number of unique distinct individuals who saw the ad at
15 least once during the preprogram Facebook testing. That
16 number was 309,958 distinct individuals. We know that because
17 obviously Facebook monitors the distinct impressions and can
18 tell us the number of distinct individuals who are reached
19 versus the total number of ads that were delivered, which
20 includes the multiple delivery of ads to multiple people.

21 Those two numbers will make sense when you talk
22 about frequency which is the average number of times someone
23 saw the ad on Facebook. And that's just over three. So the
24 frequency times the reach is roughly equivalent to the
25 impressions that you're delivering.

1 The final number is the clicks to the case website.
2 This was 18,721. This is the number of people who clicked
3 through and can be thought of as -- we view it as a response,
4 a response to the advertising. Upon clicking the notice
5 advertisement in Facebook, potential class members are
6 redirected to the case website, which obviously contains
7 information that you, Your Honor, you're aware of.

8 We conducted these tests over three rounds from
9 March 29th to May 12th. Each test allowed us to adjust
10 targets and to continue improving response rates along the
11 way. As I mentioned, there were 18,721 total clicks on the ad
12 with 309,958 individuals exposed to the advertisement on
13 average just over three times each.

14 When they clicked, they were redirected to the case
15 website. There were also additional individuals beyond the
16 18,721 who interacted with the content in other ways or in
17 additional ways, including sharing it with their friends or
18 commenting on it or liking the content.

19 18,721 clicks among the 309,958 individuals reached
20 equates to just over a 6-percent response rate. This response
21 among -- this response was higher among the best testing ads
22 and was -- is above average both based on our experience and
23 on Facebook's internal metrics. After you run an ad, Facebook
24 comes back with what's called a relevancy score and it tells
25 you how -- on a scale of 1 to 10 how likely one of their

1 individual users was to find it relevant; so were they likely
2 to engage with it.

3 And those numbers were consistently above average
4 for the advertising and including the top ones were
5 significantly above average in terms of relevancy scored to
6 these individuals.

7 Subject to the court approval, we predict that a
8 similar response rate will be observed if we serve the best
9 testing advertisements to the entire universe of what we've
10 identified as about 3.4 million users who are among the most
11 likely to be class members with -- based on the relevant
12 dataset.

13 The reason that we believe that they are the most
14 likely to be relevant class members is both based on the data
15 we used to come up with the tests in terms of people who have
16 identified with hunting groups or with the Remington page or
17 shown interest in hunting and also the results of the test,
18 which showed which people when they see an ad about having a
19 trigger replaced on a Remington rifle are most likely to
20 engage with it. It was based both on the data that we had
21 before the test and then how the test was conducted.

22 We believe the broader notification will likely
23 result in a more significant response rate among those we
24 advertise to than the response that was previously achieved as
25 requested in the court order.

1 As next steps, we propose, first of all, expanding
2 the social media notice to the entire dataset audience that I
3 just was describing. We would request approval of the court
4 to expand beyond the initial test groups that we used, which
5 were randomized subsets of the larger -- of the larger
6 universe, and publish notice to that larger universe of users
7 in the U.S. who are identified pursuant to our
8 hunter/sportsman audience model overlaying with individuals
9 who had a self-expressed interest in topics relating to
10 hunting and Remington Arms and social media. These are people
11 who have proactively said that they have an interest in
12 hunting, Remington, or in many cases both and who, based on
13 our initial tests, we believe are the most likely potential
14 class members because of their higher engagement rates with
15 ads that offer for their trigger to be replaced.

16 The second is the radio piece, which Joe Juenger
17 from the Garretson Group will discuss. Then, finally, we
18 would obviously seek to report back to the court. The
19 empirical results from these efforts will be tracked and
20 reported as directed by the court. This is incredibly
21 important to us. We track and -- for everything we do. We
22 use it to both optimize the outreach that's taking place and
23 provide you with a very objective view of what we believe
24 we've accomplished in terms of reach, click-through,
25 impressions, and the other metrics that are useful for Your

1 Honor's purpose.

2 We believe that the court should expect this type of
3 data back from any digital notice effort just in order to
4 evaluate effectiveness. While social media is, of course,
5 just one portion of a larger effort, we believe the rich data
6 that comes back will continue to be useful in evaluating the
7 effectiveness and is why we agreed to pursue this -- pursue
8 this product, as Matt explained as we view it as a public
9 service.

10 I'm happy to answer any questions, and I apologize
11 for all the terminology. So I'm happy to jump back to any of
12 that. Thank you.

13 THE COURT: Did Signal trace claims which were filed
14 directly as a result of the social media campaign?

15 MR. BILBERRY: We only tracked click-through rates
16 to the website.

17 THE COURT: I'm sorry. You only tracked --

18 MR. BILBERRY: The people who clicked through to the
19 claims website.

20 THE COURT: Okay. So out of the -- I think the
21 briefing refers to pretesting of 150,000 -- you mentioned
22 several hundred thousand -- you're not able to tell me how
23 many claims that generated?

24 MR. BILBERRY: I don't have that number offhand, no.
25 I'm sorry.

1 THE COURT: Is that number obtainable?

2 MR. BILBERRY: I would have to ask the parties, I
3 guess, Your Honor. I'm sorry.

4 THE COURT: Well, ask them.

5 MR. BILBERRY: Yeah.

6 MR. HOLLAND: May I address the court, Your Honor?

7 THE COURT: You may.

8 MR. HOLLAND: Okay. As the court is aware with the
9 way the structure of the settlement works now, claims continue
10 to roll in. The website is open. It's alive and claims are
11 continuing to come in. There's simply no way to
12 differentiate, as I understand it, between -- we can't give
13 you a hard number. Claims have gone up. Claims have gone up
14 to over 6,500, but we can't tell you this is the precise
15 number traced to this because we have had other claims
16 continue to come in.

17 THE COURT: So it would be somewhere in the
18 neighborhood of 4,000 at the maximum that would be traceable
19 to the social media campaign?

20 MR. HOLLAND: I believe that's -- I believe that
21 that's correct. I mean, just additional claims -- you're the
22 notice and the claims czar.

23 MS. CROUCH: Mr. Holland stated it accurately, Your
24 Honor. We do know from our last filing in September you
25 mentioned before there were just under 3,000 claims that had

been filed at that time. To date we've had 6,500 claims that have been filed; so we know those claims have been filed between September and now. We do not know which ones of those claims were as a result of a click-through on an ad during the preprogram testing by Signal.

THE COURT: Okay. All right. And what is the total universe? You indicated you pretested 150,000 to 200,000. What's the total universe?

MR. BILBERRY: So the total, it ended up being 309,958 individuals who were served advertisements, and that includes both the 150,000 in the first round of testing, and then additional -- I believe it was -- I would have to go back but additional numbers that increased that to close to 300,000. And then there were some additional impressions that were based on people sharing the content themselves.

So it wasn't our -- it wasn't a paid impression. It was someone seeing the ad and then choosing it to share, share it with their friends or family members.

THE COURT: Okay. Well, those are the number that have been pretested?

MR. BILBERRY: Yes.

THE COURT: And the next step is to test the entire universe of potential gun owners. What is the universe? What's the number?

MR. BILBERRY: So the -- how we have defined it is

1 who we think are kind of the most likely to be potential class
2 members. That number by our estimation is about 3.4 million
3 that we can clearly identify on Facebook. That's based on
4 people who have an expressed interest in Remington, an
5 expressed interest in hunting or both, or those who responded
6 and look very similar to those who responded and clicked
7 through to the ads during the preprogram testing.

8 That number can be broader if we have a broader
9 definition. It can be narrower if we need to have a narrower
10 definition. That's our estimate on what we believe is kind of
11 the most effective place to broaden the advertising to right
12 now.

13 THE COURT: So in your view you pretested
14 essentially 10 percent of the universe?

15 MR. BILBERRY: Correct. Yeah. Some of the 309,000
16 are not inside the universe that we would -- that we fully
17 advertised to, including the people who might have shared it
18 with friends and family, but approximately, yes.

19 THE COURT: Okay. Thank you.

20 MR. BILBERRY: Thank you.

21 THE COURT: Mr. Juenger, I presume.

22 MR. JUENGER: Yes, Your Honor.

23 May it please the court, I am Joe Juenger. I'm
24 speaking on behalf of Signal Interactive Media as well. I
25 with a team was charged with managing the design of the

1 national radio campaign. To design the plan, we collaborated
2 with other experts. We collaborated under the leadership of
3 Judge Norton, the mediator, but we also pulled in an expert
4 media planner, professional media planner, One Four Media.
5 This is a corporation out of Boston.

6 I collaborated with its president. She has over ten
7 years of advertising and media planning experience. She has
8 substantial experience advertising to the hunter/sportsman
9 demographic specifically, and I'll go more into that in a
10 moment.

11 She in turn reached out to the senior vice president
12 of sales of the Remington Arms Company. That is, Remington
13 has key information and data on how best to reach its own
14 customers. It can be said that they're the foremost expert in
15 the world regarding who its customers are and how to reach
16 them.

17 Remington's marketing group, their sales group,
18 shared this information with One Four Media in order to help
19 inform our decision process in the design of the national
20 radio plan. One Four Media is a corporation in Boston. The
21 majority of the campaigns they have worked on over the last
22 years have involved radio, outdoor advertising, and
23 television. They've booked campaigns in every state across
24 the U.S. except for Hawaii.

25 They focus primarily on public service announcements

1 and what's referred to as issue advertising. Their campaigns
2 are nonpartisan. Their firearms campaigns are nonpartisan.
3 They've done work and been hired by the Department of Justice,
4 the Bureau of Alcohol, Tobacco, Firearms, and Explosives. An
5 example of one nonpartisan campaign with which they've worked
6 and designed was the "Don't lie for the other guy" campaign
7 and the anti-straw purchasing program across the United
8 States.

9 With respect to the design of the national radio
10 campaign, our court-ordered notice plan includes a proposed
11 four-week national radio plan. It's designed to target the
12 key demographics of hunter/sportsman at issue. It's designed
13 to span the country's top syndicated networks and programs.
14 It's designed to be aired during peak morning and evening
15 drive times.

16 The networks are comprised of stations. There's
17 just over 1,300 individual radio stations encompassed by our
18 proposal. Subject to testing, which I'll discuss in a moment,
19 we forecast this campaign will generate more than 61 million
20 targeted impressions.

21 Our proposed national radio campaign has several
22 components. At the highest level there's two components, the
23 traditional terrestrial networks, the radio networks that
24 we're all familiar with, and then the web-based or digital
25 networks such as iHeartRadio, which I'll discuss in a moment.

1 Within each we have targeted programs with strong
2 hunter/sportsman audiences.

3 As an aside, with respect to iHeartRadio, this is a
4 media in which notice can be digitally streamed online for
5 individuals who, for example, listen on their mobile devices,
6 their phones, or listen to the radio through their computers
7 at work.

8 IHeartRadio is the largest national radio group.
9 It's formerly Clear Channel. It is the most widely-used
10 mobile app for streaming radio stations nationwide. We have
11 targeted directing ads on news talk programs, sports programs,
12 country, and rock stations among others, and I can discuss
13 those in a moment if you would like.

14 We have proposed upon evaluation a 60-second ad.
15 Within the format of iHeartRadio, the 60-second ad is not only
16 auditory, but it also has a companion banner which appears on
17 the device, the mobile phone, or computer on which you're
18 listening. Upon clicking that ad, listeners are redirected to
19 the home page of the case website, which, again, contains
20 links to the approved long-form and short-form notice
21 documents.

22 Now, I'll take a step back after talking about
23 digital radio and talk about the more traditional commonly
24 known or more ubiquitously known terrestrial networks. We
25 define two terrestrial networks. I'll describe one as a

1 custom network, a very highly-targeted custom network around
2 the hunter/sportsman demographic, and then we took a step back
3 and also created a broader national network.

4 The terrestrial or custom network, again, is
5 targeted at hunting and fishing shows specifically, but also
6 stations that are -- that have a high correlation to the
7 hunting and fishing demographic. Colloquially I would say
8 that would be stations involving NASCAR or related interests,
9 things of that nature.

10 To give you an idea of the number of stations across
11 America, it is 302 stations in our proposed custom network.
12 Gross impressions are forecasted at just over 29 million. The
13 net reach of this custom network will be approximately 14.5
14 million persons. Average frequency is per person. Each
15 person will hear the ad two times.

16 Geographically the U.S. coverage will be 98.6
17 percent. That is an enormous asset for us to reach putative
18 class members in a large scale with somewhat traditional
19 media. We took a step back and went to even broader than that
20 to pursue the best notice practical under the circumstances.

21 We also created a national radio plan, which was a
22 broader set of stations, and in fact it was 1,386 stations
23 across the U.S. The gross impressions of this broader
24 network, which we will implement concurrently, is
25 approximately 27 million gross impressions. The net reach is

1 8.1 million unique or unduplicated persons. Average frequency
2 of this network is 3.4 times the commercial will be delivered
3 to these individuals.

4 I have this station list available. We did not
5 include it with our submission because what I have here is
6 approximately 90 pages long. I'm more than happy to file a
7 supplemental brief or upon reviewing the materials I have, and
8 I guess upon the motion of counsel, I could enter it into
9 evidence or simply share it with you with permission to
10 approach the bench.

11 The radio script, which is the message of the media
12 or across the media, we evaluated both 30-second and 60-second
13 commercials. Based on recent empirical studies, scientific
14 studies, the recall, which is key, from 60-second commercials
15 is significantly greater than that of 30-second commercials.

16 So we chose 60-second commercials upon evaluation
17 because we felt, based on research, it would allow us to
18 clearly articulate the summary of the case, describe the
19 rights and options of all parties, describe how the listeners
20 -- how and where the listeners may get more information, how
21 they will participate, and across 60 seconds, we found we were
22 able to do this without rushing and just as importantly,
23 reiterating the call to action to improve the recall and drive
24 response rates.

25 In conclusion, the last thing pending questions I

1 would say we also propose preprogram testing or in-program
2 testing with respect to the radio campaign that we're
3 proposing. We'd propose to administer the radio campaign in
4 two rounds in order to let us evaluate empirically and
5 optimize feedback to adjust the message or station list, for
6 example.

7 That is the material I prepared to present, but I'm
8 happy to answer any questions, Your Honor, you might have.

9 THE COURT: Did you consider running the ads on
10 television stations as opposed to radio? Why did you choose
11 radio rather than television?

12 MR. JUENGER: It was considered whether to run the
13 ads on television. That evaluation was made by the parties
14 and the prior notice agent prior to our engagement. It's
15 outside the scope of what I was personally involved with. We
16 dealt with data analytics in the radio program, but I know
17 that the parties did evaluate and vet the television
18 programming. They can probably speak to that process and
19 their decision making.

20 THE COURT: Can you tell me whether radio
21 advertising is more effective than television advertising
22 based on your experience in the industry?

23 MR. JUENGER: I think it's -- I think there's a
24 little bit of -- there's more to that answer because I think
25 it depends, first of all, on the demographic you seek to

1 reach, and in this case, I do believe that radio is very
2 suitable. Without respect to television, it's very suitable
3 for this audience. I think it would be very effective. That
4 would be my response.

5 THE COURT: Are you able to tell me whether in your
6 judgment it's more effective than television?

7 MR. JUENGER: I did not personally run a comparison
8 of television to radio in this matter.

9 THE COURT: Historically, which is more effective?

10 MR. JUENGER: I would say that in my class action
11 experience, I think the efficiency and effectiveness is
12 weighed with respect to television advertisements, and in the
13 majority of class actions, in the vast majority, and we can
14 all attest based on our everyday experience, we do not see
15 television advertising as much as magazines, news print,
16 online, and radio.

17 That also has to do with --

18 THE COURT: Can you -- Mr. Juenger, can you directly
19 answer my question?

20 MR. JUENGER: I cannot. I have not done a
21 comparative study with respect to this demographic.

22 THE COURT: Okay. Mr. Sherk.

23 MR. SHERK: Your Honor, thank you. I can shed a
24 little light on this area because I was involved in some of
25 the conversations between counsel after we got your order in

1 December of last year.

2 And in particular when we got your order, we
3 realized that we needed to do something different, something
4 that hadn't been done. We didn't want to do more of the same
5 thing, vis-a-vis notice, and so I got together with
6 Mr. Arsenault and Mr. Holland. We really brainstormed about
7 what to do, and we ended up with the Signal group because we
8 thought this is going to provide us with cutting-edge
9 technology. We're going to get to real objective data which
10 we can show the court. We can prove that people are seeing
11 these ads that go out.

12 And along the way, television was briefly touched
13 upon, and we found -- we really found very few instances of
14 television being used as a vehicle for notice in class
15 actions, and that's because we found that it is very broad.
16 It is not targeted at all, and we really wanted to get to
17 that.

18 Also, Your Honor, it is prohibitively expensive. We
19 thought we would get much more bang for the buck by going for
20 the cutting-edge unique services that the Signal group could
21 provide in terms of social media notice plus, you know, which
22 is -- it's a comprehensive and very expensive radio plan. We
23 thought those were the best fits for us here.

24 THE COURT: Okay. Thank you.

25 MR. JUENGER: Anything else, Your Honor?

1 THE COURT: Give me just a moment, please.

2 No. Thank you.

3 MR. JUENGER: Thank you, Your Honor.

4 THE COURT: Mr. Holland.

5 MR. HOLLAND: I don't know if you have any questions
6 of class counsel now as a result of the presentations. I'm
7 happy to answer those. If you don't, I would like to make a
8 few concluding remarks.

9 THE COURT: I notice that there are components of
10 the revised notification plan which are not incorporated into
11 the third revised version of the settlement agreement. Is
12 that intentional, unintentional? What's the effect of that?

13 MR. HOLLAND: It would be my judgment, Your Honor,
14 that we're looking for the court's guidance that these would
15 in fact be endorsed by the court and become part of our
16 agreement before making an amended settlement agreement and
17 including those in such an amendment.

18 THE COURT: Mr. Holland, late last week or over the
19 weekend Mr. Todd Hilsee of the Hilsee Group forwarded an
20 unsolicited correspondence to the court suggesting that the
21 revised plan is -- well, let me just say it can be improved
22 upon. Have you had an opportunity, you or counsel for
23 Remington, had an opportunity to review that letter, and would
24 anyone care to comment on the comments -- on the contents of
25 that letter?

1 MR. HOLLAND: Just very briefly I've had an
2 opportunity. It was obviously filed at the very end of last
3 week, and with preparing for this hearing and travel over here
4 and so forth, I haven't had a chance to dissect it, spend a
5 lot of time with it, take a look at the statements made in
6 great detail.

7 We have been in this process, and I think the
8 mediator made note of this, very cognizant of others' views up
9 till now. Anyone that expressed prior to this time any
10 interest in this settlement or any desire to participate in
11 this process, we tried to include. We tried to give them
12 process, and that was something that we put a gold star next
13 to.

14 So this -- just the timing of it coming from a -- I
15 guess, someone who purports to be a notice expert was a little
16 surprising to me with the amount of notice that was provided.
17 Substantively, no, I have not gone through and dissected it.
18 I'm not prepared at this time to make further comment about
19 it.

20 THE COURT: Are the parties -- is plaintiff counsel
21 open to any constructive recommendations that might be
22 contained in that report that you accept as proposals which
23 might improve the overall claims rate?

24 MR. HOLLAND: I don't think we have identified
25 anything in there that we saw as -- that would improve this
52

1 present plan because the present plan attempts really to
2 destroy an entire industry, if you will, and to say that the
3 notice as it's currently being done in class actions generally
4 is inappropriate, number one.

5 Number two, I think that the plan and the
6 discussions made in -- from my very treetop level of review of
7 Hilsee's letter, seem to have been made from someone who spent
8 a lot of time doing notice many years ago. And what I mean by
9 that, Your Honor, is that in the last decade we have seen a
10 tremendous change in the way people communicate in this
11 country, and I think that the plan that we're putting forward
12 threads that needle and gets us exactly where we need to be in
13 terms of social media, radio, direct mail, email, retailer
14 poster campaign, all of the things that we've set forth. And
15 I feel like that the things that are discussed in Hilsee's
16 letter are not current and up to date, frankly.

17 THE COURT: Ms. Crouch.

18 MS. CROUCH: Thank you, Your Honor. I would echo
19 Mr. Holland's comments that we haven't had sufficient time to
20 analyze the Hilsee report. We've all read it at this point.
21 From my perspective looking at some of his commentary on the
22 claim forms and, you know, the potential use of postcard
23 cutouts, to me it seemed to oversimplify a situation that's
24 more complex than I think Mr. Hilsee appreciates.

25 Maybe he doesn't have all the facts, doesn't

1 understand the number of models at issue here, the number of
2 different remedies, and the simple breadth of what we're
3 dealing with in this class action. Also those types of
4 arguments that he was making from our perspective should have
5 been made before the objection period closed last year.

6 THE COURT: Even so, if you, upon reflection and a
7 detailed review of the proposal, find something in there that
8 you believe would help improve the claims rate, would you be
9 open to modifying the notification plan to include those
10 improvements?

11 MS. CROUCH: Certainly. After a review and
12 discussion amongst the parties, we'd be willing to consider
13 those things.

14 THE COURT: Thank you.

15 Mr. Holland, the parties' brief in support of the
16 revised notice plan suggests that the proposed plan would be
17 administered over four consecutive weeks with a target range
18 of July 4th to July 31st of this year. Obviously that's
19 already passed. What dates do you think might be more
20 suitable than dates that are already behind us?

21 MR. HOLLAND: I'd have to defer to my media
22 colleagues to give you a firm date upon which we could start.
23 Is that what you're looking for, the start date?

24 THE COURT: Yes.

25 MR. JUENGER: Could I speak to that?

1 MR. HOLLAND: Yes, please.

2 MR. JUENGER: Your Honor, with respect to social
3 media, we're prepared to begin immediately. With respect to
4 scheduling radio ads, we would need to speak with the owners
5 of that space. I can say that we're running up against the
6 campaign at this point, and media's going to become more
7 expensive as we -- as that heats up.

8 THE COURT: Okay.

9 MR. JUENGER: Thank you.

10 THE COURT: Thank you.

11 MR. HOLLAND: Anything further, Your Honor?

12 THE COURT: I don't believe I have any further
13 questions.

14 Is there anything the parties would like to say that
15 you haven't already had an opportunity to say?

16 MR. HOLLAND: Well, Your Honor, on behalf of class
17 counsel, I would like to add just a couple of comments, give
18 you our take on the reach, impression, frequency, and click-
19 through terms that were discussed here today. Those weren't
20 even terms that were in existence when I attended law school.
21 I think most of the folks in this room grew up looking up the
22 law in books. This is quite a sea change for us.

23 But I think as we've learned about it over the last
24 many years in these spaces, it does provide a unique and
25 measurable opportunity in this social media realm, and this

1 plan gives us an opportunity for the class and to really gauge
2 what's happening here. This is different than traditional
3 notice means because, for instance, when we do mail notice, we
4 have no idea who chooses to look at the thing, throw it away,
5 or what they do with it. This is much different than that.

6 When we do email notice, same thing. I don't know
7 about other folks in this room, but I delete a lot of emails
8 without looking at them.

9 With regard to television for folks, are they
10 actually sitting through the commercials anymore -- it's a
11 very real question -- instead of fast forwarding? And the way
12 that people take in television, and are they then acting on
13 things that they're seeing here.

14 The social media component really gives us an
15 excellent opportunity for measurement of that. And so that
16 plus the radio, plus all of the other elements that we've
17 talked about, we continue to be very proud of those, and we
18 appreciate the opportunity to come in and present this plan to
19 you and hope that it meets with your satisfaction.

20 THE COURT: Okay. Thank you.

21 MR. HOLLAND: Thank you.

22 THE COURT: Mr. Sherk.

23 MR. SHERK: Yes, thank you, Your Honor.

24 Just a couple remarks from Remington's perspective.

25 It's fair to say that your December order of last year really

1 hit like an A-bomb, and we have worked extraordinarily hard
2 with class counsel to try to come up with a supplemental
3 notice package that the court will endorse and agree with.

4 I've really got to commend Judge Norton for holding
5 this group together. It's been an extraordinarily difficult
6 phase of the case in terms of working things out. It's been
7 time consuming. It's been expensive. We've all really,
8 really worked at it, Your Honor; and so it's my request for
9 Remington that we get the claims process going, we drive
10 toward final approval hopefully, and we can start fixing guns.

11 Thank you.

12 THE COURT: Okay. If there is nothing further from
13 class counsel or counsel for Remington Arms, is there anyone
14 else in the courtroom who would like to speak to the issues
15 before the court this morning?

16 Okay. The court is not an expert in devising the
17 most efficient way to alert potential claimants as to the
18 existence of the settlement agreement or the method of
19 presenting claims to the court. It does seem to me that the
20 parties have strived valiantly to come up with a plan that
21 would alert potential members of the class that they have the
22 opportunity to present claims and to have rifles retrofitted
23 or to receive a voucher.

24 Whether it will work or not, I do not know. I will
25 say that to some extent the proof is in the pudding. There is

1 a number of claims presented which in my mind would justify a
2 finding that the settlement is fair, reasonable, and adequate.
3 I don't know what that number is. As Justice Potter Stewart
4 said in reference to pornography, I will know it when I see
5 it, and I will know when I see the total number of claims that
6 are filed as a result of the revised notification plan,
7 whether it is adequate for me to make that finding, which is
8 necessary to approving the agreed settlement.

9 That's not very reassuring to you, I recognize that,
10 but, nevertheless, I do have a responsibility to the members
11 of the class to make certain that the benefit flowing to them
12 is somewhat proportionate to the benefit flowing to Remington
13 Arms in this case.

14 Let me ask the parties to submit to me a proposed
15 order submitted in electronic form so that I might modify it
16 if necessary that would approve the proposed notification plan
17 as described by the parties this morning. Upon receipt of
18 that order, I will consider what the parties are specifically
19 asking me to do and will either approve it in the form
20 submitted or modify it in such a way that I think is
21 consistent with the court's responsibility in this and any
22 class action case for that matter.

23 In summary, I would say that your marching orders
24 are to go forward, and we'll see what happens. And I wish you
25 the very best. I hope that when it is said and done and when

1 the sun sets, there will be a sufficient response that I can
2 in good conscience approve the plan. I do think that there is
3 merit in removing or repairing guns which may discharge
4 unintentionally, and to the extent that that reduces the
5 likelihood that someone might be injured or killed as a result
6 of that, that's a good thing.

7 But there are limits, and I think the parties
8 recognize my responsibility to the members of the class and to
9 the public at large.

10 Is there anything further this morning, Mr. Holland?

11 MR. HOLLAND: No, Your Honor.

12 THE COURT: Ms. Crouch?

13 MS. CROUCH: No, Your Honor.

14 THE COURT: Judge Norton, anything further?

15 JUDGE NORTON: No, Your Honor. Thank you.

16 THE COURT: Okay. Thank you all very much. I
17 commend you for the effort that you've put into the proposed
18 notification, and I hope it generates results that we are all
19 comfortable with.

20 If there is nothing further this morning, then we
21 will be adjourned.

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I certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

_____	_____
Date	Registered Merit Reporter